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REMARKS

Claims 1-8 and 10-13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bealkowski et al. '075 ("Bealkowski"). This rejection is respectfully traversed for the following reasons.

A. CLAIM 1

In order to expedite prosecution, claim 1 has been amended to include a similar feature as recited in claim 13. Claim 1 as amended recites in pertinent part, "wherein said computer operates to compare a parameter of the firmware of one of said plurality of disk devices to a parameter of the firmware of another one of said plurality of disk devices whereby firmware of the one of said plurality of disk devices is updated to the firmware of the another one of said plurality of disk devices." Turning to Bealkowski, the server 102 merely downloads the updated firmware to the clients 102B without any comparison. Regarding the "compare" feature with respect to claim 13, the Examiner alleges that "[c]ol. 18, lines 49-56 describe a version code ... of one memory bank [that] is compared to the version code of another memory bank" However, Bealkowski does not disclose comparing a parameter of the firmware of disk device 102 to a parameter of the firmware of disk device 102B or vice versa. Instead, Bealkowski expressly discloses that version codes of memory bank and back-up 502, 504 *within a single disk device* are compared. Parameters of the firmware among the different disk devices 102, 102B are not compared to each other. Indeed, the comparison in Bealkowski appears to operate only to ensure consistency of the firmware for the primary and back-up memory within a given disk device, whereas the present invention as recited in claim 1 can use the comparison for determining updates among the plurality of disk devices.

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As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that Bealkowski does not anticipate claim 1, nor any claim dependent thereon.

B. CLAIM 2

Claim 2 recites in pertinent part, "a first transmitting step of transmitting firmware from the first memory of one of said disk devices into a second memory coupled to said computer, and; a second transmitting step of transmitting the firmware stored in said second memory to a disk device to be updated" Turning to Bealkowski, the only firmware transmission step appears to be from the "server" disk device 102 (using an external update program on diskette having the new firmware) to the "client" disk devices 102B which receive the update from the "server" 102 (*see* col. 10, lines 2-11). Bealkowski does not appear to suggest a second step of transmitting firmware stored in any of the *client* disk devices 102B to another disk device. As previously mentioned, Bealkowski updates the firmware of the disk devices using the external update program rather than existing firmware of the various disk devices.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that Bealkowski does not anticipate claim 2, nor any claim dependent thereon.

C. CLAIM 8

Claim 8 is submitted to be patentable for reasons generally similar to those discussed above with respect to claim 2. Claim 8 recites in pertinent part, "a second

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memory for storing a selected firmware of one of said plurality of disk devices, wherein the selected firmware is transmitted to the second memory from the first memory of the one of said plurality of disk devices and thereafter transmitted to another one of said plurality of disk devices." Turning to Bealkowski, among the disk devices only server 102 appears to transmit firmware updates. Accordingly, none of the memory banks in the disk devices 102, 102B receive firmware from a disk device which is thereafter transmitted to another disk device. As previously mentioned, server 102 receives the firmware from an external diskette, while the clients 102B do not appear to transmit firmware to other disk devices.

As shown in Figure 1 of Applicant's drawings, one exemplary embodiment of the second memory 3 can store firmware from any one of the disk devices 22-26 stored in first memories 32-36, respectively, so as to enable subsequent transfer to another one of the disk devices. The second memory provides one possible means by which to enable temporary storage of firmware of one disk device (e.g., by copy) before being transferred to another disk device.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that Bealkowski et al. does not anticipate claim 8, nor any claim dependent thereon.

D. DEPENDENT CLAIMS

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplicatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as

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claims 1, 2 and 8 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

Based on all the foregoing, it is respectfully submitted that claims 1-8 and 10-12 are patentable over Bealkowski et al.. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. § 102 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,
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